IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No. 739 of 2006

Omprakash s/o Murlidhar Singhania .. Appellant

versus

Ashok S/o Otanmal Chhabria & Anr. .. Respondents

...

Mr.S.K. Chaurasia i/b A.M. Saraogi for the appellant.

CORAM : D.G. KARNIK, J

DATED : 30th November 2006

P.C.:

1. Heard learned counsel for the appellant.

2. This appeal is directed against the order dated 23rd August 2006 passed by the trial court refusing the injunction.

3. The appellant filed a suit against the respondent for an injunction restraining them from

carrying out construction on the plot of land bearing U.No.19. According to the appellant,the respondent no.1 agreed to sell to him some premises on the first floor of the proposed building on plot no.U.No.19. Respondent carried out the construction but the construction was demolished by the Ulhasnagar Municipal Council on the ground that construction was made without prior permission. The respondent now wants to carry out the construction after obtaining the necessary permission of the Ulhasnagar Municipal Council. I fail to see that in these circumstances how the appellant is entitled to an injunction restraining the respondent from carrying out the construction. If the appellant has a valid and subsistent agreement of sale in his favour, he can sue for specific performance. On the other hand he is suing for an injunction to prevent the respondent from carrying out any construction. Such an injunction, if granted would prevent the respondent from carrying out his part of the contract and allotting the premises to the respondent. In my view, the object of seeking the injunction clearly is colateral and not to enforce the contract but to prevent any lawful construction for collateral purposes. For these reasons, there is no merit in the appeal which is hereby dismissed summarily.

(D.G. KARNIK, J)